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August 1, 2022

*Ben & Jerry's Homemade, Inc. v. Conopco, Inc., No. 1:22-cv-05681 (ALC)*

Dear Judge Carter:

This Firm represents Defendant Conopco, Inc. in the above-titled action, and we write in response to the letter filed this afternoon by the limited-purpose board of Ben & Jerry's Homemade, Inc., purporting to act on behalf of Ben & Jerry's Homemade, Inc.

In an order of July 14, 2022, the Court directed the parties to file a "joint status report" regarding the parties' mediation efforts. Contrary to the board's suggestion, we did not decline or otherwise fail to confer with them on the contents of the joint submission. On the contrary, we conferred (by numerous email and telephonic exchanges) and agreed to the submission of a joint statement that would track the exact language the parties had previously agreed would be used in the event mediation was unsuccessful. As set out in a July 18, 2022 stipulation and order, the parties agreed jointly to request that "Plaintiff's motion for preliminary injunction be placed back on the Court's calendar (at the Court's earliest convenience), based on the parties' briefing and factual record as it existed on July 13, 2022 (without prejudice to Conopco responding to arguments raised in Plaintiff's reply)." Rather than use the agreed-upon text, the board filed its own letter, truncating the agreed-to language and suggesting incorrectly that counsel for Conopco declined to meet and confer.

We are prepared to proceed to a hearing on the pending motion, on the terms agreed by the parties and ordered by the Court, at Your Honor's convenience.

Respectfully submitted,

/s/ David R. Marriott

David R. Marriott

Hon. Andrew L. Carter  
United States District Judge  
Southern District of New York  
40 Foley Square  
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VIA ECF

Copy to:

All counsels of record

VIA ECF and electronic email